

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DEC 22 2005

JOHN F. CORCORAN, CLERK
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ANTONIO LUIS DIAZ-RODRIGUEZ,)
Petitioner,)

Civil Action No. 7:05cv00367

v.)

ORDER

UNITED STATES OF AMERICA,)
Respondent.)

By: Samuel G. Wilson
United States District Judge

In accordance with the memorandum opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that respondent's motion to dismiss is **GRANTED IN PART AND DENIED IN PART**. The court hereby dismisses all claims in the above captioned 28 U.S.C. § 2255 motion, **EXCEPT** Diaz-Rodriguez's claim that counsel failed to file an appeal. The court hereby **REFERS** the matter to United States Magistrate Judge Michael Urbanski for an evidentiary hearing limited to the issue of whether petitioner Antonio Luis Diaz-Rodriguez requested his attorney to file an appeal and for preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

Diaz-Rodriguez is advised he may appeal this decision pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure by filing a notice of appeal with this court within 60 days of the entry of this order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

The Clerk is directed to send certified copies of this order and the accompanying memorandum opinion to all parties.

ENTER: This 22nd day of December, 2005.

[Signature]
UNITED STATES DISTRICT JUDGE